IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5674 OF 1986.

Shankar Dagadu Pardeshi,]
deceased through his heirs:]

Dattaraya Shankar Pardeshi,]
deceased through his heirs:]

1) Smt. Vimal Dattatraya Pardeshi,]
Guardian of Applicant No.5,]
2) Swati Dattatraya Pardeshi,]
3) Ramchandra Dattatraya Pardeshi,]
4) Rahul Dattatraya Pardeshi,]
5) Birju Dattatraya Pardeshi,]

All r/o. 1612/18, Bhim Pura,]
Bababhan Chowk, Pune - 411 001.] .. Petitioners

Versus

1. Smt. Muktabai Savalaram Bagwan,]
age 56 years,]
2. Smt. Shakuntala Ishwar Suryawanshi,]
age 38 years,]
3. Smt. Chandrasena Shankar Karnal,]
age 28 years,]
all resident of 1612/13,] .. Respondents
Bhimpura Lane, Pune.] (Ori.Plaintiff)

Mr. Savaji i/b Mr. Prafulla Shah for the petitioners.

None for the respondent.

ALONGWITH

WRIT PETITION NO. 5791 OF 1987.

1. Smt. Muktabai Salvaram Bagwan,]
2. Smt. Shakuntala Iswar Suryawanshi,]
all residing at 1612/13, Bhimpura]
Lane, Pune.] .. Petitioners

Versus

Shri Shankar Dagdu Pardeshi,]
since deceased through his legal heirs:]

1(a) Dattatraya Shankar Pardeshi,]
residing at 1593, House No.19,]
Bhuripura Babajah Chowk, Pune.]
1(b) Malan Kaluram Pardeshi,]
1(c) Santosh Kaluram Pardeshi,]
1(d) Nitin Kaluram Pardeshi,]
above R.Nos.1(b) to 1(d) residing]
1612/12, Bhimpura Lane, Pune.]

1(e) Mrs. Sonubai Shankar Pardeshi,]
residing at C/o.1593, Lane No.18,]
Bhimpura, Pune - 411 001.] .. Respondents

None for the petitioners.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 03RD AUGUST, 2005

ORAL JUDGMENT. :

1. Heard. None for the respondents-landlords. Petitioner-tenant has invoked Article 227 of the Constitution of India and sought to challenge the impugned judgment and order dated 19th September, 1986, whereby the VIIIth Additional District Judge, Pune (for short "Appellate Court") has allowed the Appeal and the suit of the respondents-landlords has been decreed on the ground of default.

2. There is no dispute in the present Writ Petition that an application for fixation of standard

rent is pending even before the issuance of the demand notice dated 12th January, 1982. There was no agreed rent fixed between the parties. Upto 1977, the rent was deposited at the rate of Rs.5/- p.m. By demand notice dated 12th January, 1982, the respondents-landlords claimed Rs.50/- per month plus education cess. Pending the standard rent application, such demand by the landlords, therefore, was objected and resisted by the petitioners-tenants and that resulted into non payment of rent. This defence has a substance, as rightly observed by the Trial Court that pending the decision of the standard rent application, such demand by the landlords, apart from the issuance of such notice itself, nowhere gives any right to the landlord to claim eviction or possession of the suit premises in question. The Appellate Court, however, reversed the said finding.

3. Mr. Savaji, the learned counsel appearing for the petitioners pointed out a Purshis filed on the record dated 21st December, 1984, to suggest that the said standard rent application is still pending. However, he was unable to state the present position of the same. As we are concerned with the demand notice dated 12th January, 1982, at least on that date, the application for standard rent was pending. Considering this, the Appellate Court, accordingly was wrong in

granting the decree of possession on the basis of default in question. The Trial Court, according to me, was right in rejecting the suit for possession on the ground of default.

4. For the above reasons and in view of the fact that the protection is available to the tenant the moment there is an application for fixation of standard rent is filed and pending. Such protection cannot be taken away merely because the landlord thereafter demanded the exorbitant rent and merely because, there was no dispute raised or no reply was filed to the said demand. In the present facts and circumstances of the case, therefore, the Petition is allowed. The impugned judgment and order of the Appellate Court dated 19th September, 1986, is quashed and set aside. Rule is made absolute.

5. As per the Office Note itself, Writ Petition No.5791 of 1987 has abated against respondent No.1(a) and dismissed against respondent No.1(A), 1(B), 1(C), 1(d) and 1(E) for non prosecution.

6. In view of the above, both the Writ Petitions are disposed of with no order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]